FILED
MAY 20 1941
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1940

No. 1051

K. DIAMANTOPOULOS, Minister to the United States for the Kingdom of Greece,

Petitioner,

against

THE AMERICAN TOBACCO COMPANY and R. J. REYNOLDS TOBACCO COMPANY, *et al.*

MOTION REQUESTING COURT TO CONSIDER IMMEDIATELY PETITION FOR WRIT OF CERTIORARI AND IF WRIT IS GRANTED TO DETERMINE THE CASE IMMEDIATELY UPON THE PETITION, RECORDS AND BRIEFS AS FILED, WITHOUT ORAL ARGUMENT.

CARVER W. WOLFE,
Proctor for Petitioner.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

Supreme Court of the United States

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THE AMERICAN TOBACCO COMPANY and R. J. REYNOLDS TOBACCO COMPANY, *et al.*

Notice of Motion.

Sirs:

PLEASE TAKE NOTICE that on the 26th day of May, 1941, the within motion will be submitted to the Supreme Court of the United States:

1. That the Supreme Court of the United States determine before adjournment of the present term whether a Writ of Certiorari shall issue in the above entitled matter to the United States Court of Appeals for the Second Circuit directing it to send to this Court the transcript of records in this matter, and

2. That the Supreme Court of the United States, if it grant the petition for a Writ of Certiorari, at the same time

determine on the printed records and briefs as filed, without oral argument, the merits of the case.

A printed copy of the aforementioned motion is served upon you herewith.

(Signed) CARVER W. WOLFE,
Counsel for Petitioner.

Service accepted this
19th day of May, 1941.

(Signed) T. Catesby Jones
Henry V. Gorsuch
Counsel for Respondents.

Affidavit of Carver W. Wolfe.

SUPREME COURT OF THE UNITED STATES,

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STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

CARVER W. WOLFE, being duly sworn deposes and says: I am counsel for Cimon Diamantopoulos, Minister to the United States for the Kingdom of Greece, in the above entitled matter.

There is presented to this Court for determination a question of sovereign immunity involving a Greek vessel, which although urgently needed by the Greek Government for war purposes has been seized by the United States Marshal in the Southern District of New York and is now in his custody.

This is a proceeding in Admiralty begun by the filing of a libel for cargo damage, in the United States District Court for the Southern District of New York, by The

American Tobacco Company, claiming damage in the amount of $185,000.00 and R. J. Reynolds Tobacco Company, claiming damage in the sum of $200,000.00.

The libel was *in rem* against the S.S. *Katingo Hadjipatera* and *in personam* against J. C., N. C., and A. C. Hadjipateras, as owners and operators of the S.S. *Katingo Hadjipatera,* with a Writ of Foreign Attachment.

The S.S. *Katingo Hadjipatera* is a Greek vessel, of 3,661 gross tons, 351.7 feet in length, 51 foot beam and 23.9 feet depth.

The libel herein was filed on the 7th day of March, 1941 and process issued against the vessel on the same day, and the vessel was immediately taken into custody by the United States Marshal for the Southern District of New York. The vessel, ever since being seized by the Marshall has been and now is in his possession although urgently needed by the Greek government for war purposes.

By cable from the Greek Minister in London, dated February 22nd, 1941, Captain Courbellis Director of the Mercantile Marine Division of the Greek Consulate General was notified that the Greek Steamship *Katingo Hadjipatera* had been requisitioned by the Greek Government. Thereafter on February 25th, 1941 Captain Courbellis, by letter, notified the Master of the vessel that his vessel had been requisitioned by the Greek Government. This notice was received by the Master of the vessel, Captain Skinitis, on the arrival of the vessel at Newport News, Virginia on February 26th, 1941 and in a telephone conversation to Captain Courbellis on that same day, Captain Skinitis acknowledged receipt of the notice and accepted the requisition.

On March 13th, 1941 the Greek Minister to the United States, made representations to the Secretary of State with regard to the vessel, claiming sovereign immunity.

On March 14th, 1941, the Honorable Cordell Hull, Secretary of State of the United States, transmitted to the Attorney General of the United States the note of the Greek Minister suggesting that the Attorney General instruct the appropriate United States Attorney to appear in the proceeding:

> "* * * without argument or comment on his part other than to state that the statements of the Government of Greece made in its behalf by the Greek Minister at Washington are brought to the attention of the Court as a matter of comity between the Government of the United States and the Government of Greece."

On March 14th, 1941 Judge Leibell signed an order to show cause, stating as follows:

> "* * * Why an order should not be made and entered herein dismissing the suit of American Tobacco Company and R. J. Reynolds Tobacco Company against the Steamship *Katingo Hadjipatera,* her engines, boilers, etc., and J. C., N. C. and A. C. Hadjipateras, and order wholly dismissing the above entitled suit for want of jurisdiction on the ground that said suit is brought against property of a friendly sovereign nation not subject to the jurisdiction of this court, and immune from suit in this court. * * *"

Thereafter the United States Attorney for the Southern District of New York, under date of March 17th, 1941, filed a suggestion of sovereign immunity stating:

> "* * * The undersigned presents this suggestion as a matter of comity between the United States Government and the Government of the Kingdom of Greece for such consideration as this Court may deem necessary and proper."

On March 21st, 1941 the Acting Secretary of State transmitted a note to the Attorney General at the request of the District Court, in which it was stated:

> "The position of the Department as set forth in its letter of March 14th, 1941 to you in regard to this vessel is similar to that which has been taken by it in other cases involving the question of the requisition of merchant vessels by foreign governments."

On March 24th, 1941 Judge Leibell heard testimony on the issue:

> "* * * Whether or not the master was served with a notice that the vessel had been requisitioned by the Greek Government and, if so served, whether he took actual possession of the vessel on behalf of the Greek Government, and when and where and by what means he did so."

On March 25th, 1941 Judge Leibell orally made his findings of fact and conclusions of law, the nub of which was that the vessel had been requisitioned as of February 26th, 1941 when the said requisition was accepted by the master but that the requisition was not to take effect, however, until the west bound cargo had been discharged. Upon the findings of fact and conclusions of law of Judge Leibell an order was entered from which an appeal was taken by the Greek Minister to the Circuit Court of Appeals for the Second Circuit.

In view of the urgent need of shipping and in further view of the fact that the vessel was under arrest, the Circuit Court of Appeals immediately set the case for argument and heard the argument on the day that the record was filed.

The Circuit Court of Appeals on the 23rd day of April handed down its decision, affirming the decision of the Dis-

trict Court. The order affirming the judgment of the District Court was entered May 9th, 1941. A petition for a writ of certiorari was filed with this court on May 13th, 1941.

From the above statements of facts it will be seen that the petitioner has used the utmost diligence to have the question of sovereign immunity determined immediately. The libel was filed on March 7th, 1941, and the vessel seized on that day; representations were made to the Department of State; the matter was heard and decided by the District Court and the Circuit Court of Appeals and a petition for a writ of certiorari filed with the Supreme Court of the United States on May 13th, 1941.

The S.S. *Katingo Hadjipatera* is a cargo vessel urgently needed by the Greek Government for its war purposes. As the matter now stands the vessel is under arrest and should the merits of the question of sovereign immunity not be immediately determined, it will continue in the custody of the Marshal, thus withdrawing from service tonnage which, in view of the war conditions, cannot be spared.

In view of the urgency of the situation, I request that the court immediately examine the petition for a writ of certiorari filed herein and that it determine whether it will grant the petition and that it consider and determine the merits of the questions presented, on the briefs and record already filed, and without oral argument, so that a decision may be had before this court adjourns on June 2nd, 1941.

CARVER W. WOLFE.

Sworn to before me this
19th day of May, 1941.

ALICE S. DOYLE
Notary Public, Kings County
Kings Co. Clk's No. 52 Reg. No. 2055
N. Y. Co. Clk's No. 102 Reg No. 2D91
Commission Expires March 30, 1942

(SEAL)